IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajendra Singh. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 269/2005
against the order dated 26-10-2004 passed
by the Addl. Chief Judicial Magistrate No.3,
Jodhur. In Criminal Case No. 34/2004.

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Date of Order: October 06, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. B.S. Rathore, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

The instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 26.10.2004 passed by the Additional Chief Judicial Magistrate No.3, Jodhpur (for short, "the trial Court" hereinafter) in Criminal Case No. 34/2004, whereby the application filed by the petitioner seeking supply previous statements of witnesses Anand Singh, Gaurav and Shyam Sunder, which were recorded by the police during investigation of the case, was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully perused the order

impugned.

It is not in dispute that the aforesaid persons were the witnesses in Crime Report No.290/2001, Police Station, Mahamandir, Jodhpur, which is the subject matter of Criminal Case No. 34/2004. It is also stated that Anand Singh is the person who is the author of the FIR. The trial Court declined to supply the copies of the previous statements of these witnesses recorded by the police under Section 161 of the Code to the petitioner on the ground that at the time of framing of the charge, only the police papers are to be seen and nothing more.

At no point of time, the petitioner expressed his intention or desire to use the previous statements of these witnesses at the stage of framing the charge. At any rate the previous statements made by these witnesses to the police under Section 161 of the Code are used for cross examination of the witnesses. Section 145 of the Indian Evidence Act, 1872 provides that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting

Thus, the accused-petitioner has a right to have the

previous statements of witnesses recorded by the police during investigation under Section 161 of the Code for the purpose of cross-examining and contradicting the prosecution witnesses with their previous statements. In the circumstances, therefore, in my view, the trial Court fell in error in declining to supply the copies of the previous statement of the witnesses noticed above to the petitioner.

The criminal miscellaneous petition is, therefore, allowed. The impugned order dated 26-10-2004 passed by the trial Court is set aside. The application filed by the petitioner seeking supply of the previous statements of the witnesses is allowed. The trial Court shall direct the prosecution to supply the copies of the previous statements of the aforesaid witnesses and the same be taken on record when used to contradict the witnesses. The stay petition stands disposed of.

(H.R. PANWAR), J.

mcs